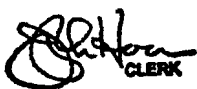


UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**  
**DEC 15 2008**  
  
CLERK

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CATHEDRAL SQUARE PARTNERS LIMITED PARTNERSHIP	*	CIV. 07-4001
	*	
and	*	
	*	
WEST PARK, LTD.	*	ORDER
	*	
and	*	
	*	
46 <sup>TH</sup> STREET PARTNERS LIMITED PARTNERSHIP	*	
	*	
and	*	
	*	
RIVERVIEW PROPERTIES, LTD.	*	
	*	
	*	
Plaintiffs,	*	
	*	
-vs-	*	
	*	
	*	
SOUTH DAKOTA HOUSING DEVELOPMENT AUTHORITY	*	
	*	
	*	
Defendant.	*	
	*	

\*\*\*\*\*

Plaintiffs, Cathedral Square Partners Limited Partnership, West Park, Ltd., 46th Street Partners Limited Partnership, and Riverview Properties, Ltd., allege in their Second Amended Complaint that Defendant, South Dakota Development Authority (“SDHDA”), is in breach of the Housing Assistance Payments contracts (“HAP contracts”) that it entered into with Plaintiffs.

Plaintiffs assert that the Court has jurisdiction over this matter under 28 U.S.C. § 1331, on the basis that this action arises under Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437f (“Section 8”). Defendant, in its Answer, does not contest the Court’s

jurisdiction. (Answer ¶ 5).

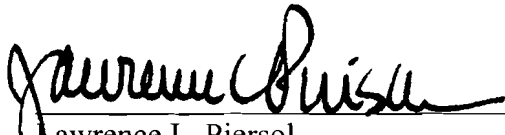
Even though the parties do not question the Court's jurisdiction over this matter, the Court is bound to raise issues of subject matter jurisdiction *sua sponte* if questions arise as to whether a case or controversy is within its limited jurisdiction. *United States v. Corrick*, 298 U.S. 435, 440 (1936) (stating that "the lack of jurisdiction of a federal court touching the subject-matter of the litigation cannot be waived by the parties, and the District Court should [ ] have declined *sua sponte* to proceed in the cause."). In light of the decisions by the Eighth Circuit in *Weeks Constr., Inc. v. Oglala Sioux Hous. Auth.*, 797 F.2d 668 (8th Cir. 1986) and by the District Court for the Southern District of Florida in *Kunkler v. Fort Lauderdale Hous. Auth.*, 764 F.Supp. 171 (S.D. Fla. 1991), the Court asks that the parties respond to the question of whether Plaintiffs' claims arise under federal law such that the Court has jurisdiction to hear this case.

It is hereby ORDERED:

- (1) Plaintiff's have until the close of business on Monday, January 7th, 2009, to respond to this Court's Order;
- (2) Defendant's response to Plaintiff's supplemental brief shall be filed with the Court by the close of business on Monday, January 14th, 2009.

Dated this 14<sup>th</sup> day of December, 2008.

BY THE COURT:

  
Lawrence L. Piersol  
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:   
DEPUTY